REMARKS

Thorough examination of the application is sincerely appreciated.

Applicant wishes to thank the Examiner for the helpful suggestions regarding claims 1 and 8, and for indicating allowability of claims 8-15.

Although allowed, claim 8 was objected due to some informal error, as noted in the Office Action. In response, claim 8 is amended to correct the error, and withdrawal of the objection is respectfully requested.

Claims 1-7 and 16-20 were rejected under 35 USC 103(a) as being obvious over US Patent 6,148,005 (hereinafter "Paul") in view of US Patent 5,740,075 (hereinafter "Bigham").

In response, the rejections are respectfully traversed as lacking sufficient factual support and failing to establish a prima facie case of obviousness in accordance with the established cases and statutory law.

In the Office Action, the examiner alleges that "Paul et al. further discloses transporting nodes 106", apparently corresponding to Applicants' adaptive node of claim 1. For such disclosure, the examiner relies on Paul's Abstract. Applicant's representative has carefully reviewed the Paul patent and failed to find such a disclosure in the patent, contrary to the examiner's remarks. Paul does not teach or suggest any adaptive nodes: elements 106 are transporting layers (see col. 3, lines 53-57 of the patent), not an adaptive node.

Perhaps, the examiner believes that transporting layers are analogous to adaptive nodes. If this is the case, he is respectfully requested 1) to specifically point out where a disclosure on such equivalence between transporting layers and adaptive nodes can be found in Paul; 2) to provide an affidavit stating facts within his personal knowledge; or 3) to provide a prior art reference stating the same, because the examiner's interpretation of Paul can't be supported by the record.

While the examiner concedes that Paul is deficient in disclosing Applicants' feature of "an adaptive node having a second network analyzer that accounts for the number of the channels subscribed to by the receiver," it is asserted in the Office Action that Bigham cures this deficiency in Paul. Applicants' representative has carefully reviewed the Bigham patent and respectfully disagrees.

The examiner merely extracts Access Controller 16_2 and inserts it into Paul, while completely disregarding Paul and Bigham as a whole. As pointed out above, there is absolutely no disclosure anywhere on adaptive node, as recited in Applicants' claim 1. Mere mention of Access Controller is not sufficient to correspond to Applicants' feature of "an adaptive node having a second network analyzer that accounts for the number of the channels subscribed to by the receiver," as recited in claim 1.

Perhaps, the examiner relied on personal knowledge of the facts or those of a skilled artisan in the statement that "it would have been obvious ..." on page 4 of the Office Action. If this is the case, then "particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed." In re Kotzab, 1371. The MPEP provides guidelines for relying on official notice and personal knowledge, which the Examiner did not follow in this case:

> The rationale supporting an obviousness rejection may be based on common knowledge in the art of "well-known" prior art. The examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art ...
>
> When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons.

See MPEP §2144.03. If the rejection is maintained, it is respectfully requested that the examiner provide an affidavit stating facts within his personal knowledge or an affidavit by a skilled artisan.

It is respectfully submitted that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *See* MPEP § 2143-§2143.03 for decisions pertinent to each of these criteria.

Analyzing the references according to the above roadmap, first the examiner offered an unsupported, conclusory remark, disguised as motivation, that "the motivation is to reserve channels for receivers in accordance with network load". It is not clear what the basis was for such an assertion. There is absolutely no motivation or suggestion to combine the references, except on the basis of the impermissible hindsight and knowledge gleaned from Applicants' invention. Such a practice is prohibited by the applicable law and cannot possibly be sanctioned by the USPTO. Picking and choosing elements from various references, while disregarding each reference as a whole, is clearly prohibited by the courts and cannot possibly be sanctioned by the USPTO.

Second, there is no reasonable expectation of success because the prior art references are not combinable. If the examiner disagrees, he is respectfully requested to indicate, based on the patents teachings, how the goal/objective of each patent fits with each other.

Third, Paul and Bigham, even when combined, do not teach all of the Applicant's features as recited in claim 1. See, for example, the above discussion regarding adaptive nodes. As argued above, the Applicant's features are not taught or suggested in the prior art references, and their combination is deficient in teaching or suggesting all the claim limitations.

Therefore, the cited references fail to render obvious the claimed invention, because the above-identified criteria are not met. The claimed invention, according to claim 1, is thus distinguishable over the cited references.

Analysis of independent claims 7 and 16 is analogous to the one of claim 1, as presented hereinabove. To avoid repetition, claims 7 and 16 will not be discussed in detail with the understanding that they are patentable at least for the same reasons as claim 1. Applicant, therefore, respectfully requests withdrawal of the rejection and allowance of claims 7 and 16.

Claims 2-6 and 17-20 depend from independent claims, which have been shown to be allowable over the prior art references. Accordingly, claims 2-6 and 17-20 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein. Applicant submits that the reason for the rejection of claims 2-6 and 17-20 has been overcome and respectfully requests withdrawal of the rejection and allowance of the claims.

In view of the above, it is respectfully submitted that Paul and Bigham, whether alone or in combination, do not anticipate or render obvious the present invention.

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited. However, if for any reason this application is not considered to be in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney at the number listed below prior to issuing a further Action.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

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